88-1508

NO. _____

Supreme Court, U.S.
FILED
FEB 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1988

ISHMAEL ROSS, ET AL.
PETITIONERS,
V.
THE UNITED STATES GOVERNMENT
COLUMBIA GAS TRANSMISSION CORPORATION
MONTEREY COAL COMPANY
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT

ISHMAEL ROSS, PRO-SE
10241 Sawmill Road
Powell, Ohio 43065
(614) 889-2097

Pro-Se for Petitioners

March 1989

60 pp

QUESTIONS PRESENTED

1. Whether Columbia Gas Transmission Corporation, Hugh and Robert Ross Heirs *or* the Ross Heirs through James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins have legal title and deed to the land in question, which is 298.25 acres (Appeals #86-2114), and 16,286.08 acres (Appeals #86-2115), situated in Wayne County, West Virginia.

2. Whether the Ross Heirs through James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins have been erroneously included with the Hugh and Robert Ross Heirs from the inception of this case, when in-fact they constitute *two*, *separate* blood lines.

THE PARTIES

The parties are petitioners, Ishmael Ross, et al., and The United States Government, Columbia Gas Transmission Corporation and Monterey Coal Company.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NO. _____

ISHMAEL ROSS, ET AL.
PETITIONERS,

V.

THE UNITED STATES GOVERNMENT
COLUMBIA GAS TRANSMISSION CORPORATION
MONTEREY COAL COMPANY
RESPONDENTS

OPINIONS BELOW

The prior opinion most pertinent to this Petition and the judgement under review is the December 8, 1988 Decision of the Fourth Circuit Court of Appeals of Richmond, Virginia stating that Columbia Gas has legal title to the 298.25 acres of land and minerals in Appeals Case #86-2114 (Tracts 550M & 556M) and 16,286.08 acres of land and minerals in Appeals Case #86-2115 (Tract 552M) and the denial of a Re-Hearing Out of Time by the Fourth Circuit Court of Appeals. The December 8, 1988 Decision is reproduced in the Appendix of this Petition. The denial for a Re-Hearing Out of Time was never mailed to the Petitioner.

JURISDICTION

The Decision of the Fourth Circuit Court of Appeals was entered December 8, 1988, affirming a final judgement of the District Court of Huntington, West Virginia giving legal title to Columbia Gas. The Decision was mailed December 16, 1988; Petitioner received Decision December 19, 1988; Response of Petitioner received by Court on December 29, 1988. Petitioner's "14 days" amounted to ten (10) days.

CONSTITUTIONAL PROVISIONS INVOLVED

This Petition involves the Just Compensation clause of the Fifth Amendment to the United States Constitution and the Right of Trial by Jury clause of the Seventh Amendment to the United States Constitution.

STATEMENT OF THE CASE

A. *Summary of Pertinent Facts*

The land in question, 298.25 acres of land and minerals (Appeals Case #86-2114) and 16,286.08 acres of land and minerals (Appeals Case #86-2115), situated in Wayne County, West Virginia and condemned by the United States Government for use in the East Lynn Reservoir Project, is purported to be owned by (1) Columbia Gas Transmission Corporation, (2) Heirs of Hugh and Robert Ross, and (3) Heirs of James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins, the latter Rosses being represented by Petitioner, Ishmael Ross, Pro-Se, under rights granted to him by Judge Dennis R. Knapp, of the United States District Court, Southern District of West Virginia, Huntington, West Virginia in an Order dated March 16, 1985. (See Appendix A-1).

Petitioner Ishmael Ross respectfully requests to let the records of the Court reflect the pertinent fact that the *two* Ross families have separate blood lines and are *not* related in any manner. The Ross Heirs represented by the Petitioner, Ishmael Ross, has consistently been "lumped together" with the heirs of Hugh and Robert Ross in most court documents. On October 5, 1988, an oral argument was presented in the Court of Appeals. Columbia Gas' attorney, James A. Colburn, was asked if he represented "all the Rosses." Mr. Colburn replied, "Yes sir, your Honor." Mr. Colburn was not representing all the Rosses. Ishmael Ross, Petitioner, was acting as Pro-Se for the Ross Heirs through their ancestors James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins. On April 11, 1985 a Judgement Order was given to the "Ross Heirs", again not stipulating which Ross Heirs. (See Appendix A-2.)

The Hugh and Robert Ross deed would not abstract. (See Appendix A-3.)

The Hugh and Robert Ross Heirs made an effort to redeem said lands by paying back taxes. This does not entitle them to legal ownership. Legal ownership does

not rest upon who attempts redemption. There has been no investigation to determine which heirs are vested with the legal right to claim valid title. (See Appendix A-4.)

To Petitioner Ishmael Ross' knowledge, Columbia Gas has never produced a legal title or deed that would abstract. (See Appendix A-3.)

Petitioner Ishmael Ross is prepared to show legal deeds and grants in the names of the aforementioned ancestors.

Columbia Gas Transmission Corporation signed a Disclaimer waiving any right to compensation to be paid by the United States Government for the interests of the heirs of Hugh and Robert Ross taken in Tracts 550M and 556M, the 298.25 acres of land. (See Appendix A-5.)

B. *Proceedings Below*

On March 5, 1975, the United States Government commenced a condemnation action to acquire coal and mineral rights in two tracts of land (Tract Nos. 550M and 556M), approximately 298.25 acres, for the East Lynn Reservoir Project in West Virginia. Two years later, the United States Government brought another action to

acquire mineral interests in approximately 16,286.08 acres (Tract 552M) for the same project. The geographic boundary of Tract 552M encompassed Tract 550M.

On February 18, 1982, Columbia Gas filed a disclaimer as to any right to the compensation to be paid by the United States Government for the interests of the heirs of Hugh Ross taken in Tracts 550M and 556M. (See Appendix A-5.)

On March 2, 1983, the District Court consolidated the two actions to determine the validity of an 1879 deed relevant to both. The Court referred the matter to Magistrate Jerry D. Hogg, who held a hearing and issued a report upholding the validity of the deed and thereby the validity of the Columbia Gas chain of title.

A trial was conducted from March 26-28, 1985, and a jury determined just compensation in Civil Action Case 75-0061 (298.25 acres) to be $63,000.

The District Court then referred the matter to Magistrate Hogg to determine title and distribution of the jury award.

On January 28, 1986, the District Court, apparently to resolve all questions of title, appointed an attorney,

William E. Hamb, to determine ownership of all condemned property. Mr. Hamb concluded that only Columbia Gas had valid title.

On June 2, 1986, Magistrate Hogg filed a report recommending Mr. Hamb's findings be approved. On June 25, 1986, the District Court issued an order adopting the Magistrate's Report and dismissing 75-0061 with prejudice. (See Appendix A-6.)

When the Hugh and Robert Ross Heirs attempted to pay back taxes on the 298.25 acres of land, Attorneys Charles C. Postlewaite and Walter L. Wagner, Jr., attorneys for the heirs of James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins, filed an objection to the decision on the tax issue issued by Magistrate Jerry D. Hogg. (See Appendix A-4.)

From the District Court of Huntington, West Virginia, Petitioner Ishmael Ross appealed into the United States Court of Appeals for the Fourth Circuit.

On October 5, 1988, an oral argument was held in the Court of Appeals in Richmond, Virginia. Petitioner Ishmael Ross was told by the Deputy Clerk Shirley Beasley that he would not be allowed to participate, since he was

a pro-se and not an attorney. This conflicts with the order issued by District Court Judge Dennis R. Knapp on March 21, 1985 giving Mr. Ross permission to participate in any and all further proceedings. (See Appendix A-1.)

On December 8, 1988 a Decision was rendered by the Court of Appeals in Richmond, Virginia giving legal title to the aforementioned lands. (See Appendix A-6.)

The Motion to Summarily Affirm The Judgement of the District Court was issued. (See Appendix A-7.)

On August 18, 1988 an Order was issued by the Court of Appeals holding Appeals Nos. 86-2115, 86-2116, 86-2117, 86-2123 and 86-2128 in abeyance pending Court's decision in No. 86-2114. (See Appendix A-8.)

On December 21, 1988, Petitioner Ishmael Ross issued a response to the December 8, 1988 Decision of the Court of Appeals. (See Appendix A-9.)

On January 7, 1989, Petitioner Ishmael Ross filed a petition for a Re-Hearing Out of Time because he was cut short 4 days. (See Appendix A-10.)

On February 6, 1989, Petitioner Ishmael Ross requested leave to file a petition to appeal Case #86-2114 and Case #86-2115. (See Appendix A-11.)

REASONS FOR GRANTING THE WRIT

When the United States Court of Appeals, Fourth Circuit, Richmond, Virginia issued its Decision of December 8, 1988, the notification to me, Ishmael Ross, Petitioner, was not mailed until December 16, 1988. I received the letter on December 19, 1988, which did not allow sufficient time for me, according to the rules of the Appeals Court, however, I did have my request into the Court of Appeals by December 29, 1988 asking for a Re-Hearing Out of Time.

The Court of Appeals has failed to let me, Ishmael Ross, Petitioner, take part in the case which I filed in my brief I sent to the Court of Appeals asking to be heard.

The Court of Appeals has failed to recognize the heirs of James Madison Ross, Covington Collingsworth Ross, my great grandfathers and Sherrod Adkins, my great, great, great grandfather in this case. The District Court of Huntington, West Virginia has also failed to recognize the aforementioned ancestors from the date I first staked my claim.

In front of witnesses, one of the judges on the Fourth Circuit Court of Appeals in Richmond, Virginia made the

statement that he was "not going to clean up West Virginia's mess."

CONCLUSION

In conclusion, the heirs of James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins, represented by Ishmael Ross, Pro-Se, feel and can prove that we have been discriminated against both in the District Court of Huntington, West Virginia and in the Appeals Court, Fourth Circuit, Richmond, Virginia.

We respectfully request that the Supreme Court exercise its discretionary review power and allow us the opportunity, without further discrimination, to substantiate our claim as to legal ownership of said lands and just compensation due.

Respectfully submitted,

Ishmael Ross, et al.
10241 Sawmill Road
Powell, Ohio 43065
(614) 889-2097

Petitioner and Pro-Se

APPENDICES

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

Vs. Civil Action No. 75-0061-H

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, et al.,

DEFENDANTS.

ORDER

Upon the 16th day of March, 1985 came a portion of the defendants, by counsel, Ishmael Ross for a request for permission to appear as counsel representing the interest of Ishmael Ross descended from John D. Ross, Sr., James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins.

Said appearance is to assist the Court in determining issues concerning who the proper heir is, who is rightfully entitled to receive the proceeds generated from the Court's determination as to the true value of the land in the government condemnation proceeding. Therefore, it is hereby ordered that Ishmael Ross has legal rights to

appear in this Court to represent himself for the purpose of determining the issues mentioned herein and *to participate in any and all further proceedings concerning said action.* The Clerk is directed to send certified copies to all counsel.

Entered this 21st day of March, 1985.

JUDGE DENNIS R. KNAPP

U.S. District Court

Prepared By: C. W. Ross

ISHMAEL ROSS

Rightful Counsel for the Heir of
Himself, of John Ross, James Madison Ross,
Covington Collingsworth Ross and
Sherrod Adkins

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Vs. Civil Action No. 75-0061,

298.25 ACRES OF LAND, et al,

Defendants.

JUDGEMENT ORDER TO ROSS HEIRS

This action came on for trial before the Court and a jury, Honorable Dennis R. Knapp, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is ORDERED and ADJUDGED that the plaintiff pay into the registry of the Court the sum of $63,000, less any amount previously deposited with the Court, plus interest to be determined at a later date.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: April 11, 1985

DENNIS R. KNAPP, JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA
HUNTINGTON

ISHMAEL ROSS,

Plaintiff,

Civil Action No.
3:85-1354

V.

UNITED STATES et al.,

Defendants.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES BY DEFENDANT *COLUMBIA GAS TRANSMISSION CORPORATION*

Defendant, Columbia Gas Transmission Corporation (hereafter "Columbia") submits the following verified answers to the Plaintiff's First Set of Interrogatories. In each instance the interrogatory is repeated with the answer thereafter.

Interrogatory 1: Why were nine pages missing from the Court Transcript in the case concerning

298.25 acre tract of land and minerals in Case No. 75-0061-H and did not pay the taxes on the 16,286.08 acres of land and minerals, Civil Action No. 77-3324-H, but was paid by the Hugh Ross Heirs and the Hugh Ross deed would not abstract, leaving nothing to the Hugh Ross heirs, therefore wouldn't you say that both tracts of land and minerals belongs to the heirs of James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins?

Answer: Columbia objects to this interrogatory on the ground that it states the false premise that Columbia has not paid taxes on its land.

Interrogatory 5: Why does Monterey Coal Company say that I have not filed a claim, when I used the same case numbers and civil action numbers that the government condemned the same tracts of land under?

Answer: Columbia does not know.

Interrogatory 6: Why does Monterey Coal Company say they held Columbia Gas, formerly

298.25 acre tract of land and minerals in Case No. 75-0061-H and did not pay the taxes on the 16,286.08 acres of land and minerals, Civil Action No. 77-3324-H, but was paid by the Hugh Ross Heirs and the Hugh Ross deed would not abstract, leaving nothing to the Hugh Ross heirs, therefore wouldn't you say that both tracts of land and minerals belongs to the heirs of James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins?

Answer: Columbia objects to this interrogatory on the ground that it states the false premise that Columbia has not paid taxes on its land.

Interrogatory 5: Why does Monterey Coal Company say that I have not filed a claim, when I used the same case numbers and civil action numbers that the government condemned the same tracts of land under?

Answer: Columbia does not know.

Interrogatory 6: Why does Monterey Coal Company say they held Columbia Gas, formerly

known as United Fuel Co., to be the owner of the minerals they received from Columbia Gas either by deed or lease?

Answer: Columbia does not know.

Interrogatory 7: If Columbia Gas has a good sound deed that can be abstracted, which Columbia Gas refused to have done, would that be the reason Monterey Coal Company stopped mining coal?

Answer: Columbia does not know.

Interrogatory 8: Would you say that I have a just and legal right in Federal Court to prove that my portion of land and minerals consisting of 298.25 acres in Case No. 75-0061-H belongs to me, since it was not proven in court which group of Rosses were the owners; Hugh Ross heirs or James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins heirs?

Answer: Columbia does not know.

Interrogatory 9: Since it was not proven in court

which group of Rosses owned the 298.25 acre tract of land and minerals, how could I ask for a re-trial?

Answer: Columbia objects to this interrogatory on the basis that to answer would require Columbia to render legal advice to plaintiff.

Interrogatory 10: If Columbia Gas will have an expert deed title search, will you allow me to have my lawyer join in the deed title search?

Answer: No.

Interrogatory 11: Why does Monterey mention that they intend to use the law of the Statute of Limitations, if they have a good deed and lease from Columbia Gas?

Answer: Columbia does not know.

COLUMBIA GAS TRANSMISSION
CORPORATION

By _____
Its Attorney

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, TO-WIT:

H. L. Snyder, being first duly sworn, deposes and says that he is Assistant Secretary and Assistant General Counsel of Columbia Gas Transmission Corporation, a corporation, and that the foregoing answers to Plaintiff's First Set of Interrogatories, not objected to herein, are true to the best of his information and belief.

_____

Subscribed and sworn to before me this 14th day of February 1986.

_____

Notary Public

CERTIFICATE OF SERVICE

On February 14, 1986, I mailed a true copy of the foregoing Answers to Plaintiff's First Set of Interrogatories by Defendant Columbia Gas Transmission Corporation to the following parties and counsel:

Ishmael Ross (pro-se)
10241 Sawmill Road
Powell, Ohio 43065

David Faber, Esq.
United States Attorney
P.O. Box 3234
Charleston, WV 25322

Monterey Coal Company
P.O. Box 496
Carlinville, IL 62626

H. L. Snyder, Counsel
for Columbia Gas
Transmission
Corporation

HHR95A51

OBJECTIONS TO MAGISTRATE JERRY D. HOGG'S

DECISION ON THE TAX ISSUE

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON, WEST VIRGINIA

United States of America,

Plaintiff,

Civil Action No.
75-0061

V.

298.25 Acres of land, et al.,

Defendants.

OBJECTIONS OF THE HEIRS OF JAMES MADISON ROSS, COVINGTON ROSS AND SHERROD ADKINS

The Heirs of James Madison Ross, Covington Ross and Sherrod Adkins, by and through their attorneys, Charles C. Postlewaite and Walter L. Wagner, Jr., object to the Report-Recommendations of the U.S. Magistrate J. D. Hogg. For purposes of simplicity, we adopt *in toto* the Objections made by Robert and Hugh Ross Heirs, articulately written and filed by Lincoln Thorman, including

the addendum thereto, except for the portion making reference to which of the Ross Heirs are entitled to ownership amongst said heirs. Specifically, the *James Madison Ross, Covington Ross and Sherrod Adkins Heirs, contest whether or not the Robert and Hugh Ross Heirs were even entitled to rightfully pay the back taxes and interest pursuant to the redemption statute and procedures of the State of West Virginia, and thus, they also challenge the validity of the Certificate of Redemption issued by the State of West Virginia on July 29, 1983, concerning 5,700 acres of mineral land in Stonewall District, Wayne County, West Virginia.*

The issue of true ownership (and the accompanying right of redemption) has not yet been properly determined. This complex matter of tracing lineage and title to said lands in question to determine the ownership of said land (and who rightfully holds the right of redemption to said lands) must be given adequate consideration. For purposes of advising and informing this Court with the detailed evidence concerning this issue, this Court should provide counsels of record a significant amount of time within which to prepare said evidence for the

Court's consideration. In determining ownership, the right of redemption and the right of the Heirs as to who is entitled to the jury award entered on April 16, 1985, a minimum of *four months* should be given, with adequate notice to all parties, to prepare said evidence so that this Court may render a sound, knowledgeable and informed decision concerning these issues.

PAYMENT OF TAXES

CONSTITUTING REDEMPTION

The Robert and Hugh Ross Heirs argue that, because they have made an effort to redeem certain lands by the payment of taxes thereon, they are entitled to legal ownership of said lands. There has been no investigation and determination by this Court as to which heirs are vested with the legal right to claim valid title. This would vest the appropriate heirs with the effective right to redeem said Lands via the payment of property taxes.

The Magistrate, using the same erroneous logic as the Robert and Hugh Ross Heirs, indicates in his Report that, because the money put up for redemption of lands

via the payment of taxes was refunded, the people who received the refund have forfeited their right to claim their legal ownership. *The claim to legal ownership does not rest upon who attempts redemption and who doesn't.*

Once again, it is clear, basic law that only the proper heirs to whom legal title to said land is vested have the right to validly redeem their land by paying said real estate taxes.

The fact that the land has not been redeemed, because the taxes have not been paid, does not act as a bar to the heirs who are rightful, legal owners to said land to exercise their right of ownership.

To grant ownership to Columbia Gas, carte blanche, because of the absence of redemption at this date and time, is clearly erroneous and unjust. Even if, at the outer limits of reasoning, this Court were to find that the taxes paid by Columbia Gas were considered taxes on the real estate rather than *ad valorem taxes, the mere payment of said taxes does not vest title in the real estate to the payor of those taxes. Title to said real estate cannot vest in a party until such time as it has been declared so via*

order of a court through proper procedures of foreclosure and sheriff's sale.

Thus, the James Madison Ross, Covington Ross and Sherrod Adkins Heirs respectfully ask this Court to carefully examine the situation at hand and reconsider the erroneous logic of the Magistrate, and to further allow the parties to properly prepare and present the issues of ownership amongst all parties concerned.

The Court's determination will immediately dispel said Magistrate's erroneous visions of mootness concerning the issues contained in his Report.

Respectfully submitted,

Charles C. Postlewaite
88 E. Broad St., Suite 2030
Columbus, Ohio 43215-3589
Telephone: (614) 224-8269

Walter L. Wagner, Jr.
P.O. Box 278
Dunbar, West Virginia 25064
Telephone (304) 768-1266

Attorneys for Ross Heirs

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

UNITED STATES OF AMERICA,

Plaintiff,
Vs.

CIVIL ACTION NO. 75-0061-H
Tracts Nos. 550M and 556M

298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, STATE OF WEST VIRGINIA, AND MILTON ROSS, ET AL., AND UNKNOWN OWNERS,

Defendants.

DISCLAIMER

Comes now Columbia Gas Transmission Corporation (formerly known as United Fuel Gas Company), a corporation, and being fully informed does hereby DISCLAIM and waive any right to the compensation to be paid by the United States of America for the interests of the heirs of Hugh Ross taken in Tracts 550M and 556M by this action.

It is expressly understood that this Disclaimer will in no way or manner prejudice the rights of Columbia Gas Transmission Corporation to its claim of ownership in the

mineral estate acquired in Tract No. 552M, Civil Action No. 77-3324. (The 16,286.08 acres.)

COLUMBIA GAS TRANSMISSION CORPORATION,
a corporation

By: _____
ITS Senior Vice President

Mark D. Clark
COUNSEL for Columbia Gas Transmission Corporation

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 86-2114

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

298.25 Acres of land, more or less, situate in Wayne County, West Virginia; MILTON ROSS, et al and unknown owners,

Defendants-Appellants.

COLUMBIA GAS TRANSMISSION CORPORATION

Intervenor-Appellee

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Dennis Raymond Knapp, Senior District Judge.

(CA-75-0061-H)

Argued: October 5, 1988 Decided: December 8, 1988

Before MURNAGHAN, WILKINSON, and WILKINS, Circuit Judges.

Lincoln Raphael Thorman; James Allan Colburn (BAER, ROBINSON & COLBURN on brief) for Appellant. H. L. Snyder (H. H. Roberts, Wm. Roy Rice, Johnny M. Knisely II on brief); Robert L. Klarquist (Myles E. Flint, Deputy Assistant Attorney General; David A. Faber, United States Attorney; Gary E. Pullin, Assistant United States Attorney; Charles J. Brennan, Maria A. Iizuka, DEPARTMENT OF JUSTICE on brief) for Appellees.

PER CURIAM:

This is a condemnation action by the United States involving two tracts of land in West Virginia. Litigated for over ten years, there is no dispute on appeal as to the amount of the award; the only issue is who should receive it. The two principal contenders for title to the condemned tracts are (1) the Columbia Gas Transmission Corporation (collectively "Columbia Gas") and (2) a number of individuals claiming under the rights of their

common ancestors Hugh and Robert Ross (collectively the "Ross Heirs"). The District Court approved a Magistrate's Report holding that Columbia Gas owned the two tracts. The court then dismissed the action. The Ross Heirs have filed this appeal, contending that the Magistrate erred in his determination and that, in any event, a previous disclaimer by Columbia Gas and prior rulings of the District Court invalidated Columbia Gas' title claim.

I

On March 5, 1975, the United States commenced an action in condemnation, No. 75-0061, to acquire the coal and mineral rights in two tracts of land (Tract Nos. 550M and 556M), approximately 298.25 acres, for the East Lynn Reservoir Project in West Virginia. The defendants included the Ross Heirs and Columbia Gas. A judgement order was entered condemning the property. Two years later, the United States brought another action, No. 77-3324, to acquire the mineral interests in approximately 16,286.08 acres (Tract 552M) for the same project. The geographic boundary of Tract 552M encompassed Tract 550M.

On February 18, 1982, Columbia Gas filed a disclaimer as to

> any right to the compensation to be paid by the United States of America for the interests of the heirs of Hugh Ross taken in Tracts 550M and 556M by this action.
>
> It is expressly understood that this Disclaimer will in no way or manner prejudice the rights of Columbia Gas Transmission Corporation to its claim of ownership in the mineral estate acquired in Tract No. 552M, Civil Action No. 77-3324.

The District Court then dismissed Columbia Gas from 75-0061 without prejudice to its claim of ownership in 77-3324.

On March 2, 1983, the District Court consolidated the two actions to determine the validity of an 1879 deed relevant to both. The court referred the matter to a Magistrate (Magistrate Hogg). The Magistrate held a hearing and issued a report, upholding the validity of the deed (and thereby the validity of the Columbia Gas chain of title).

The District Court conducted a *denovo* review of the record and issued an order finding all objections filed without merit and approving the report. *United States v. 298.25 Acres of Land*, 587 F. Supp. 1510 (1984).

A trial was conducted from March 26-28, 1985, and a jury determined just compensation in 75-0061 to be $63,000. The District Court then referred the matter to Magistrate Hogg to determine title to the subject property and distribution of the jury award.

Guided by *United States v. 298.25 Acres, supra,* the Magistrate determined that the issue of Land ownership was "moot" since the Ross Heirs had lost standing to challenge Columbia Gas' title.

On January 28, 1986, the District Court, apparently to resolve all questions of title, appointed an attorney, William E. Hamb, to determine ownership of the condemned property in both 75-0061 and 77-3324. Mr. Hamb filed a report concluding that only Columbia Gas had valid title to the subject tracts and was therefore the only party entitled to compensation. A hearing was subsequently conducted before Magistrate Hogg, at which time evidence was presented and Mr. Hamb was cross-examined by both Columbia Gas and the Ross Heirs. On June 2, 1986, Magistrate Hogg filed a report recommending that Mr. Hamb's findings be approved. He found that "Mr. Hamb's report and testimony, other evidence introduced at said hearing, and the argument, oral and by submitted brief, overwhelmingly support the conclusion that Columbia Gas Transmission Corporation and Columbia Coal Gasification Corporation possess legal title to the property which is the subject of these civil actions." Magistrate's Report at 2. The Magistrate specifically made no recommendation as to whether Columbia Gas had disclaimed ownership interest in Tracts 550M and 556M.

The District Court issued an order on June 25, 1986, adopting the Magistrate's Report and dismissing No. 75-0061 with prejudice. This appeal followed.

The Ross Heirs would first have us find error in the opinions of the District Court, the Magistrate and the appointed title expert, all holding that Columbia Gas has title to the condemned property. After reviewing the record and the opinions below, we can find no merit in the Ross Heirs' objections. The substantive arguments raised by the Ross Heirs on appeal were fully considered and rejected at each stage of the proceedings below.

The reasoning contained in the Hamb Report is persuasive and effectively disposes of all disputed issues. The Magistrate and District Court did not err in adopting it. Furthermore, prior rulings of the District Court and the February 18, 1987 disclaimer filed by Columbia Gas do not bar Columbia Gas' claim. The prior "rulings" pointed to by the Ross Heirs, where they exist, were never intended by the court to have preclusive effect. As to the disclaimer, Columbia Gas specifically disclaimed its interest in Civil Action No. 75-0061 *subject to* preserving its rights in Civil Action No. 77-3324. Once the cases were consolidated, the disclaimer was no longer binding and Columbia Gas had every right to participate in the action. In any event, a disclaimer by Columbia Gas does not automatically vest title in the Ross Heirs. They had no interest.

The disclaimer did not purport to create any. The alternative of awarding to the United States Government its own condemnation compensation, while it retains title, is devoid of logic or appeal.

The order of the District Court dismissing Civil Action No. 75-0061 is

AFFIRMED.[1]

---

[1] The Ross Heirs' motions to substitute their reply brief and for leave to file a separate brief are hereby granted.

U.S. Department of Justice

Land and Natural Resources

Division

MAI

33-50-201-261

Washington, D.C. 20530

December 16, 1988

Mr. John M. Greacen
Clerk
United States Court of Appeals
Fourth Circuit
U.S. Courthouse
10th & Main Streets
Richmond, Virginia 23219

RE: United States of America v.
298.25 Acres, Wayne County,
West Virginia, et al., 4th
Cir. Nos. 86-2115, 86-2116,
86-2117, 86-2118, 86-2123
and 86-2128

Dear Mr. Greacen:

There are enclosed for filing with the Court an original and three copies of the United States' Motion to Summarily Affirm the Judgement of the District Court in the Above Titled Appeals.

As indicated by the certificate of service, all parties have this date been served a copy of the Motion, together with a copy of this letter.

Sincerely,

Maria A. Iizuka
Attorney, Appellate
Section
Land & Natural
Resources Division
P.O. Box 23795
L'Enfant Plaza Station
Washington, D.C. 20026
(202) 633-2753

Enclosures

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Nos. 86-2115, 86-2116, 86-2117, 86-2118,

86-2123, 86-2128

UNITED STATES OF AMERICA,

Appellee

V.

298.25 ACRES, WAYNE COUNTY,

WEST VIRGINIA, ET AL.,

Appellants

MOTION TO SUMMARILY AFFIRM THE JUDGEMENT OF THE DISTRICT COURT IN THE ABOVE-TITLED APPEALS

The United States hereby moves the Court to summarily affirm the judgement entered by the United States District Court for the Southern District of West Virginia on June 25, 1986, from which all the above-titled appeals were taken.

On October 5, 1988, a panel of this Court (Circuit Judges Murnaghan, Wilkinson and Wilkins) heard oral argument in Appeal No. 86-2114 and, on December 8, 1988, affirmed the judgement of the District Court (Addendum). As set forth in the government's brief at pages 2-3, a number of other appeals were taken from the same District Court judgement, raising the same issue, that the District Court had erred in finding that Columbia Gas Transmission Corporation had title to property condemned by the United States for use in connection with the East Lynn Reservoir Project in West Virginia.

The other appeals still pending in this Court have been disposed of by the Court's decision rendered on December 8, 1988, since the decision confirms that no one other than Columbia Gas has title to the land in question.

Therefore, it is appropriate for the Court, in the interest of conserving judicial resources, to issue an order disposing of the other appeals.

The United States therefore moves the Court to summarily dispose of the still pending Appeals Nos. 86-2115, 86-2116, 86-2117, 86-2118, 86-2123 and 86-2128.

Respectfully submitted,

MARIA A. IIZUKA
Attorney, Department
of Justice
Washington, D.C. 20530
(202) 633-2753

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 86-2115, 86-2116, 86-2117,

86-2123, 86-2128

UNITED STATES OF AMERICA, Appellee,

Versus

ISHMAEL ROSS, et al. Appellants.

ORDER

It is ORDERED that these appeals are held in abeyance pending this court's decision in No. 86-2114, *United States of America v. 298.25 Acres.*

With the concurrences of Judge Ervin and Judge Wilkinson.

/s/ H.E. Widener, Jr.

For the Court

Filed: 08/18/88.

RESPONSE TO THE JUDGES' DECISION
DECEMBER 8, 1988

December 21, 1988

Mr. John M. Greacen, Clerk
United States Court of Appeals
Fourth Circuit
U.S. Courthouse
Tenth & Main Streets
Richmond, Virginia 23219

RE: Response from Ishmael Ross to the Fourth Circuit Court and Panel of Judges

I, Ishmael Ross, disagree with the affirming decision of the Panel of the Fourth Circuit Court of Appeals Judges, saying that Columbia Gas has legal title to the 298.25 acres of land and minerals in Appeals #86-2114 that was condemned by the United States Government.

Will the Fourth Circuit Court Judges mentioned in this panel, who affirmed the judgement entered by the United States District Court, ask Columbia Gas Transmission Corporation to show them a legal title or deed to the property in question? If Columbia Gas cannot show said panel of judges a legal title, how can this panel of judges affirm the judgement entered by the United States District Court? If Columbia Gas holds legal title, will you send me a copy? (I never received a copy.)

On October 5, 1988, a panel of this Circuit Court judges heard oral argument in Appeals #86-2114, but I was not included in the oral argument to argue on the material I sent to the Fourth Circuit Court of Appeals in Richmond, Virginia. It seems to me that this panel of judges has just heard from Columbia Gas' lawyer and Attorneys James A. Colburn and Lincoln Thorman for Hugh and Robert Ross heirs. I was present and heard the oral argument. I would have joined in the oral argument, pointing out clearly to the panel of judges that I am the owner under my ancestors James Madison Ross, Covington Collingsworth Ross and Sherrod Adkins. Shirley Beasley, Deputy Clerk, told me I was not allowed to enter into an oral argument in the Court of Appeals because I was a pro-se and not a lawyer. One of the judges asked James A. Colburn if he represented all the Rosses. James A. Colburn lied when he replied, "Yes sir, your Honor." In this case, I am a Ross pro-se. How could he be representing me?

I heard one of the judges, who sat between the two judges on the Circuit Court Panel, tell Mr. Snider, the attorney for Columbia Gas Transmission Corporation, that he had disclaimed the 298.25 acres of land and minerals mentioned in Appeals #86-2114 and could not re-claim it. How could this court panel, who was supposed to rule out all injustice, award this case to Columbia Gas?

Keep in mind that I, Ishmael Ross, was not allowed to take part in the 86-2114 case.

Sincerely,

Ishmael Ross, et al.
10241 Sawmill Road
Powell, Ohio 43065

January 7, 1989

Mr. John M. Greacen, Clerk
United States Court of Appeals
Fourth Circuit
United States Courthouse
Tenth & Main Streets
Richmond, Virginia 23219

Attention: Shirley Beasley
Fourth Circuit
Appeals #86-2114

I, Ishmael Ross, ask the United States Court of Appeals for leave to file a petition for a Re-Hearing Out of Time.

I feel the Court of Appeals is in fault saying I was late sending my response to the judges' decision on the 8th of December. I didn't receive information on the judges' decision being made on December 8th until December 19, 1988. My letter and documents of response were in your office December 29, 1988.

My 14 days time limit should have started when I received the letter. I feel I am being unfairly discriminated against.

Sincerely,

Ishmael Ross, et al.
10241 Sawmill Road
Powell, Ohio 43065

February 6, 1989

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Appeals Court Docket
Numbers 86-2114, 86-2115,
86-2116, 86-2117, 86-2118,
86-2123 and 86-2128

ISHMAEL ROSS, ET AL.

I, Ishmael Ross, ask the United States Supreme Court for leave to file a petition to appeal Cases 86-2114, which represents 298.25 acres of land and minerals and 86-2115, which represents 16,286.08 acres of land and minerals, from the Fourth Circuit Court of Appeals to Washington, D.C., Supreme Court, for reasons of unfair discrimination.

1. Time Limitation against their own rules.
2. Failure to let me take part in the case which I filed in my brief I sent to the Fourth Circuit Court of Appeals asking to be heard.

3. Failure to recognize me in the case under my ancestors James Madison Ross, Covington Collingsworth Ross, my great grandfathers and Sherrod Adkins, my great, great, great grandfather, from the date I staked my claim including December 8, 1988 when the three panel Circuit Court judges gave Case 86-2114 to Columbia Gas Transmission Corporation and later adding Case 86-2115 for Columbia Gas.
4. One of the judges on the Fourth Circuit Court of Appeals panel in Richmond, Virginia, said he was not going to clean up West Virginia's mess. If the Appeals Court won't clean up West Virginia's mess, and if you, the Supreme Court, don't clean West Virginia's mess up, then West Virginia courts can do anything they want to do illegally and get by.

Witnesses were present.

Sincerely,

Ishmael Ross, Pro-Se
10241 Sawmill Road
Powell, Ohio 43065